

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**DA, A.A., LUCINDA DEL CARMEN  
PADILLA GONZALES,**

**Plaintiffs,**

**v.**

**UNITED STATES OF AMERICA,**

**Defendant.**

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**EP-22-CV-00295-FM**

**AMENDED SCHEDULING ORDER**

Before the court is “Joint Motion to Amend Scheduling Order” [ECF No. 149], filed July 7, 2023, by the parties jointly. Therein, the parties request that the court’s scheduling order be amended to extend the dates for discovery and other deadlines.<sup>1</sup> The court finds good cause to **GRANT** the motion and makes the following amendments to the scheduling order:

**1.** The parties shall advise the court whether they elect to consent to trial by a United States Magistrate Judge no later than **June 14, 2023**.

Pursuant to 28 U.S.C. § 636(c)(1), all full-time Magistrate Judges are authorized and empowered to try any civil case, jury or non-jury, with the consent of all parties to the lawsuit. Your consent to trial by a Magistrate Judge must be voluntary, and you are free to withhold your consent without suffering any adverse consequences. If all parties consent to trial of this case by a Magistrate Judge, this court will enter an order referring the case to a Magistrate Judge for trial and entry of judgment. If the case has already been referred to a Magistrate Judge for pretrial matters and the parties consent to a trial before a Magistrate Judge, the trial will be before the Magistrate Judge already assigned to the case.

**2.** The parties asserting claims for relief shall submit a written offer of settlement to opposing parties no later than **June 14, 2023**. Each opposing party shall respond, in writing, on or before **June 28, 2023**.

**3.** The parties shall file all motions to amend or supplement pleadings or to join additional parties no later than **October 27, 2023**.

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<sup>1</sup> “Joint Motion to Amend Scheduling Order” 2–3, ECF No. 145, filed July 7, 2023.

4. All parties asserting claims for relief shall **FILE** their designation of potential witnesses, designation of testifying experts and list of proposed exhibits, and **SHALL** serve on all parties, but not file, the materials required by FED. R. CIV. P. 26(a)(2)(B) on or before **March 21, 2024**. Parties resisting claims for relief shall **FILE** their designation of potential witnesses, designation of testifying experts and a list of proposed exhibits, and shall **SERVE** on all parties, but not file, the materials required by FED. R. CIV. P. 26(a)(2)(B) on or before **May 15, 2024**. All designations of rebuttal experts shall be filed within **30 days** of receipt of the report of the opposing expert.

5. The parties shall complete discovery on or before **June 17, 2024**. Counsel may, by agreement, continue discovery beyond the deadline, but there will be no intervention by the court except in extraordinary circumstances. No trial date will be vacated because of information obtained in post-deadline discovery.

6. ADR is mandatory. ADR must be completed no later than **September 10, 2023**. The parties shall **FILE** a report on alternative dispute resolution in compliance with Local Rule CV-88 before any dispositive motions are filed. The court will not consider a dispositive motion until an ADR report is filed.

7. The parties shall file all dispositive motions, if any, no later than **August 15, 2024**. Dispositive motions as defined in Local Rule CV-7(c) and responses to dispositive motions shall be limited to **20 pages** in length.

8. All objections or motions under Rule 702 or Rule 703 of the Federal Rules of Evidence shall be filed with the court and served upon opposing parties no later than **30 days** after the receipt of the written report of the expert's proposed testimony, or within **30 days** of obtaining a copy of the expert's deposition, if a deposition is taken, whichever is later.

9. All transcript requests shall be made to Nalene Benavides, Official Court Reporter. Requests may be submitted electronically, by way of regular mail, or by hand delivery to the Clerk's Office. For non-appeal requests, parties shall submit a Transcript Order (AO 435). For appeal requests, parties shall file a Fifth Circuit Court of Appeals Transcript Order (DKT-13). The relevant forms can be found on the website for the United States District Court for the Western District of Texas.

10. This case is set for a **BENCH TRIAL** before the court on **Monday, November 18, 2024 at 1:00 pm**, in Courtroom No. 422, Fourth Floor of the United States District Courthouse, 525 Magoffin Ave., El Paso, Texas, 79901. The parties shall file their pretrial submissions in the form set out in Local Rule CV-16(f) not later than **November 4, 2024**.

If any party intends to call more than three deposition witnesses for a total of more than 45 pages of deposition testimony, then the proposed testimony shall be filed four weeks before the trial date. The other parties shall have ten days to file their proposed testimony and objections, if any.

Before filing any notice of depositions, the movant must contact any and all parties to determine if the requested depositions will be opposed. The party with the burden of proof shall be deposed first. Likewise, any of the plaintiff's retained expert witnesses shall be deposed before the defense experts.

If the parties reach a settlement or otherwise resolve the case, the parties must promptly notify the court.

Parties are encouraged to work out any scheduling conflicts and difficulties in meeting deadlines. Parties can agree to move any deadlines for paragraphs numbered one through five without leave of court, but must **FILE** notification of any such agreement. All other deadlines cannot be moved without leave of the court.

The court expects the parties to strictly adhere to this Order. Failure to do so will result in sanctions to any offending party. Continuances, even if agreed upon by counsel, will be granted rarely. A motion for continuance will only be considered if it is in writing and it is supported by affidavit(s) setting forth its bases.

Before filing any notice of depositions, the movant must contact any and all parties to determine if the requested depositions will be opposed.

All contested notices of depositions will be denied with prejudice unless the movant strictly adheres to the following:

1. Movant serves upon respondent the complete notice of deposition(s);
2. Respondent replies in writing within **seven days** of receipt (**10 days** if served by FAX, U.S. MAIL, or PRIVATE carrier);
3. Parties confer about the response within **seven days** of the response due date. Movant is responsible for scheduling said conference. Respondent's failure to respond or to cooperate will result in sanctions;
4. Within **five days** of the conference, Movant serves a proposed written specific agreement solving the dispute, and when applicable, a specific timetable for compliance;
5. Respondent accepts or declines the proposed agreement within **five days** of receipt (**eight days** if served by FAX, U.S. MAIL, or PRIVATE carrier) or submits a counter proposal; and
6. Steps 4 and 5 are exhausted.

All pleadings shall be filed within the applicable deadlines as set forth in the Local Rules of the United States District Court for the Western District of Texas.

The above procedure must be completed within the timetable set forth by the various deadlines in this Order. It does not apply to motions involving nonparties or to witnesses not employed by the parties or their counsel.

**SIGNED AND ENTERED** this **11th** day of **July 2023**.

A handwritten signature in black ink, appearing to read 'Frank Montalvo', is written over a horizontal line.

**FRANK MONTALVO**  
**SENIOR UNITED STATES DISTRICT JUDGE**